

UNFAIR COMPETITION PREVENTION AND TRADE SECRET PROTECTION ACT

Act No. 911, Promulgated on December 30, 1961
As last amended by Act No. 6421, February 3, 2001

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CHAPTER I
GENERAL PROVISIONS

Article 1 Purpose

The purpose of this Act is to maintain orderly trade by preventing acts of unfair competition such as improper use of domestically well-known trademarks and trade names, and by preventing infringement of trade secrets.

Article 2 Definitions

The definitions of terms used in this Act are as follows:

(1) "Acts of unfair competition" means any of the following acts regardless of the intention:

- (i) an act of causing confusion with another person's goods by using signs identical or similar to another person's name, trade name, trademark, container or package of goods or any other sign widely known in the Republic of Korea as an indication of goods, or by selling, distributing, importing or exporting goods with such signs;
- (ii) an act of causing confusion with another person's commercial facilities or activities by using signs identical or similar to another person's name, trade name, emblem or any other sign widely known in the Republic of Korea as an indication of commerce;

- (iii) in addition to the act of causing confusion provided in subparagraph (i) or (ii), an act of doing damage to distinctiveness or reputation attached to another person's sign by using the sign identical or similar to another person's name, trade name, trademark, container or package of goods, or any other sign widely known in the Republic of Korea as an indication of goods or commerce, or by selling, distributing, importing or exporting goods with such signs, without due cause as prescribed by Presidential Decree for instance noncommercial use;
- (iv) an act of causing confusion about the source of origin by falsely marking the source of origin on goods or in an advertisement, on the trade documents communicated to the public or in communications, or by selling, distributing, importing or exporting goods falsely marked with the source of origin;
- (v) an act of making a mark on goods, advertisements, trade documents communicated to the public or in communications, or selling, distributing, importing or exporting goods marked with a mark that would mislead the public into believing that the place of production, manufacture or processing is different from the actual place of production, manufacture or processing;
- (vi) an act of misrepresenting another person's goods, or an act of giving publicity, or an act of making a mark on goods or advertisements, that is misleading with respect to the quality, contents, producing process, usage or quantity of the goods, or an act of selling, distributing, importing or exporting by using such means or marks;
- (vii) an act of using a trademark that is identical or similar to a trademark registered in any contracting state to the Paris Convention for the Protection of Industrial

Property (referred to as "the Paris Convention"), any member economy of World Trade Organization or contracting state to the Trademark Law Treaty by a person who is or was an agent or a representative of the owner of the trademark, within the one-year period before the date on which the act was carried out, and including acts of selling, distributing, importing or exporting goods with such marks without due cause.

(2) "Trade secret" means information, including a production method, sale method, useful technical or business information for business activity, that is not known publicly, is the subject of considerable effort to maintain its secrecy and has independent economic value.

(3) "Infringement of trade secrets" means any of the following:

- (i) acquiring trade secrets by theft, deception, coercion or other improper means (referred to as "an act of improper acquisition"), or subsequently using or disclosing the improperly acquired trade secrets (including informing any specific person of the trade secret while under a duty to maintain secrecy);
- (ii) acquiring trade secrets or using or disclosing them with the knowledge that an act of improper acquisition of the trade secrets has occurred or when the lack of such knowledge was caused by gross negligence;
- (iii) after trade secrets have been acquired, using or disclosing the them with knowledge that an act of improper acquisition of the trade secrets has occurred or when the lack of such knowledge was caused by gross negligence;

- (iv) using or disclosing trade secrets to obtain improper benefits or to damage the owner of the trade secrets while under a contractual or other duty to maintain secrecy of the trade secrets;
- (v) acquiring trade secrets, or using or disclosing them with the knowledge that the trade secrets have been disclosed in the manner provided in subparagraph (iv) or when gross negligence was the cause of the disclosure or the lack of such knowledge;
- (vi) after acquiring trade secrets, using or disclosing them with the knowledge that they had been disclosed in a manner provided in subparagraph (iv), or when gross negligence was the cause of the disclosure or the lack of such knowledge.

CHAPTER II

PROHIBITION OF UNFAIR COMPETITIVE ACTS

Article 3 Prohibited Use of National Flags and National Emblems etc.

- (1) A person may not use as a trademark a symbol that is identical or similar

to the national flag, emblem or other insignia of any contracting state to the Paris Convention, a member of the World Trade Organization, or contracting state to the Trademark Law Treaty, a mark of an international organization unless authorized by the State or international organization concerned.

(2) A person may not use as a trademark a symbol that is identical or similar to any indication of inspection or certification of the government of any contracting state to the Paris Convention, a member of the World Trade Organization or contracting state to the Trademark Law Treaty unless authorized by the government of the state concerned.

Article 4 Injunction against Acts of Unfair Competition

(1) A person whose business interest is injured or threatened by an act of unfair competition may seek a court injunction or preventive order against a person who engages in the act of unfair competition.

(2) Persons who consider their business interests to be injured or threatened by an act of unfair competition may demand the destruction of goods involved in the act, the removal of facilities used during the act or other measures necessary to prohibit or prevent the act.

Article 5 Liability for Compensation of Damages from Acts of Unfair Competition

A person who intentionally or negligently causes damage to another person's business interest is liable for compensation of damages. However, Article 2(1) (iii) only applies to intentional acts of unfair competition

Article 6 Restoration of Reputation Harmed by Acts of Unfair Competition

The court may order a person who intentionally or negligently damages the business reputation of a person by an act of unfair competition to take the necessary measures to restore the business reputation of the owner in lieu of

or in addition to compensation for damages under Article 5. However, under Article 2(1)(iii), this provision applies only to an intentional act of unfair competition.

Article 7 Investigation of Unfair Competitive Acts etc.

(1) Where the Commissioner of the Korean Intellectual Property Office considers that confirming an act of unfair competition or a violation of Article 3 is necessary, the Commissioner may order public officials to enter a business or manufacturing facilities to examine related documents, books, products and so on, or to collect the least amount of products necessary for testing and inspecting them.

(2) Public officials who conduct an examination under paragraph(1) of this Article shall present a certificate indicating their competence to relevant persons.

Article 8 Corrective Recommendation to Violations

Where the Commissioner of the Korean Intellectual Property Office considers that an act of unfair competition as defined under Article 2(1), or an act that violates Article 3, has been committed by a person, the Commissioner may issue a corrective recommendation to the person to cease the act or to remove or destroy the mark used in the act within a specific period not exceeding thirty days.

Article 9 Hearings

Where the Commissioner of the Korean Intellectual Property Office considers that issuing a corrective recommendation provided under Article 8 is necessary, the Commissioner shall hear the position of the party concerned, interested persons or witnesses in accordance with the procedure prescribed by Presidential Decree.

CHAPTER III

PROTECTION OF TRADE SECRETS

Article 10 Injunction against Infringement of Trade Secrets etc.

(1) A person who possesses trade secrets may seek a court prohibition or preventive order against a person who infringes or is likely to infringe trade secrets, if the business interest of the person who possesses the trade secrets is damaged or is likely to be damaged by the infringement.

(2) If a person who possesses trade secrets files a claim under paragraph (1), the person may request the destruction of goods used in the infringement, the removal of facilities used in the infringement or any other measures necessary to prohibit or prevent the infringement.

Article 11 Compensation of Damages for Infringement of Trade Secrets

A person who damages a person who possesses trade secrets through an intentional or negligent infringement of trade secrets is liable for compensation for the damages.

Article 12 Restoration of Reputation of the Person Possessing Trade Secrets

For a person who damages the business reputation of a person possessing trade secrets through an intentional or negligent infringement of trade secrets, the person possessing the trade secrets may request the court for necessary measures to restore the business reputation in lieu of or in addition to compensation for damages under Article 11.

Article 13 Exception for Bona Fide Persons

(1) Articles 10 and 12 do not apply to an act by a person who has properly

acquired trade secrets through a transaction or uses or discloses the trade secrets within the scope of the rights the person has properly acquired through the transaction.

(2) The phrase "a person who has properly acquired trade secrets" in paragraph(1) means a person who has acquired trade secrets without the knowledge and without gross negligence that the trade secrets were improperly disclosed or that an act of improper acquisition or of improper disclosure of the trade secrets occurred when acquired under Article 2(3)(iii) or (vi).

Article 14 Statute of Limitations

When an infringement of trade secrets continues, the right to request the prohibition or prevention of the infringement of trade secrets under Article 10(1) expires unless the right is exercised within three years of the date of actual knowledge that the business interest of the person possessing the trade secrets was damaged or threatened to be damaged by an infringing person and of the actual knowledge of the infringing person's identity. The same applies if ten years have elapsed after the date on which the act of infringement first occurred.

CHAPTER IV

SUPPLEMENTARY PROVISIONS

Article 14*bis* Presumption etc. on the Amount of Damages

(1) Where a person whose business interests have been infringed by an act of unfair competition or infringement of trade secrets claims compensation for damages under Article 5 or Article 11, damages may be calculated as the transferred amount multiplied by the presumed profit per unit that the person

whose business interests have been infringed might have obtained in the absence of infringement during the period in which the infringer transferred the infringing product. However, the compensation may not exceed an amount calculated as follows: the estimated profit per unit multiplied by the number of articles that the trademark right owner or licensee could have produced subtracted by the number of units actually sold. If a person whose business interests have been infringed was unable to sell the product for reasons other than unfair competition or trade secret infringement, a sum calculated according to the number of articles subject to the reasons must be deducted.

(2) Where a person whose business interests have been infringed by an act of unfair competition or infringement of trade secrets claims compensation for damages under Articles 5 or 11, the profits gained by the infringer through the infringement are presumed to be the amount of damages suffered by the person whose business interests were infringed.

(3) Where a person whose business interests have been infringed by an act of unfair competition or infringement of trade secrets claims compensation for damages under Article 5 or Article 11, the person may claim as damages the amount of money that the person would normally be entitled to receive for using a mark applied to goods if the mark was the object of an act of unfair competition, or for using trade secrets that were the object of an act of unfair competition, or for using trade secrets that were the object of the infringement.

(4) Where the amount of actual damages caused by an act of unfair competition or infringement of trade secrets exceeds the amount referred to in paragraph(3) of this Article, the excess amount may also be claimed as compensation for damages. When awarding damages, the court may consider whether the person who caused the infringement was willful or grossly negligent.

(5) Notwithstanding paragraphs (1) to (4), in litigation related to an act of unfair competition or infringement of trade secrets where the court, owing to the nature of the case, recognizes the difficulty of proving the amount of damage that has occurred, the court may determine a reasonable amount after examining the evidence and reviewing all the arguments.

Article 14~~ter~~ Submission of Materials

In litigation related to the infringement of business interests through an act of unfair competition or infringement of trade secrets, the court may, upon the request of either party, order the other party to submit materials necessary for the assessment of damages caused by the infringement, unless the person possessing the materials has a justifiable reason for refusing to submit them

Article 15 Relationship with Other Acts

(1) If any provision of Articles 2 to 6 and 18(3) is inconsistent with the Patent Act, Utility Model Act, Industrial Design Act or Trademark Act, this Act does not apply.

(2) If any provision of Articles 2(1)(iv) to (vi), 3 to 6 and 18(3) is inconsistent with the Monopoly Regulation and Fair Trade Act, the Fair Trade and Advertising Act or the Criminal Act related to national flags and national emblems, this Act does not apply.

Article 16 Deleted

Article 17 Delegation of Authority

The authority of the Commissioner of the Korean Intellectual Property Office provided under this Act may be partly delegated to the mayor of the city of Seoul, mayors of the metropolitan cities or the governors of the provinces as prescribed by Presidential Decree.

Article 18 Penal Provision

(1) A person falling under either of the following subparagraphs is liable to imprisonment with labor not exceeding seven years or to a fine not exceeding 100 million won:

- (i) an employee or officer of a company who, without justifiable reason, uses in a foreign country a trade secret regarding useful technology of the company, or discloses the trade secret to a third person knowing it will be used in the foreign country;
- (ii) an employee or officer of a company who, to gain improper benefits or cause damage to the company in violation of the obligation to maintain secrecy of trade secrets under a contractual or other duty, uses in a foreign country a trade secret regarding useful technology of the company or discloses the trade secret to a third person knowing it will be used in the foreign country.

(2) A person falling under either of the following subparagraphs is liable to imprisonment with labor not exceeding five years or to a fine not exceeding 50 million won:

- (i) an employee or officer of a company who discloses trade secrets regarding useful technology of the company to a third person without a justifiable reason.
- (ii) an employee or officer of a company who discloses trade secrets regarding useful technology of the company to a third person to gain improper benefits or cause damage to the company in violation of the obligation to maintain secrecy of the trade secrets under a contractual or other duty.

(3) A person falling under either of the following subparagraphs is liable to imprisonment with labor not exceeding three years or to a fine not exceeding 30 million won:

- (i) a person who engages in an act of unfair competition under Article 2(i);
- (ii) a person who, in violation of Article 3, uses as a trademark a symbol that is identical or similar to the insignia or indication of the following:
 - (a) the national flag, national emblem or other insignia of any

contracting state to the Paris Convention or a member of the World Trade Organization.

- (b) an indication of an International Organization;
- (c) an indication of inspection or certification of any contracting state to the Paris Convention, a member of the World Trade Organization or an indication of inspection or certification to Trademark Law Treaty.

(4) The imprisonment and fine referred to in paragraphs (1) and (2) of this Article may be imposed concurrently.

(5) Except when necessary for national security and public welfare, the crimes under paragraphs (1) and (2) of this Article may be prosecuted only when the damaged person files a complaint.

Article 19 Dual Liability

Where a representative of a legal person or an agent, employee or any other employees of a legal or natural person violates Article 18(3) concerning the business of the legal or natural person, the penalty for fines under the subparagraphs of Article 18(3) must be imposed on the legal or natural person in addition to the violator.

Article 20 Administrative Fine

(1) A person who refuses, interferes with or evades investigation on the collection of products by a public official concerned under Article 7(1) is liable to an administrative fine not exceeding 20 million won.

(2) The Commissioner of the Korean Intellectual Property Office shall impose and collect the administrative fine referred to in paragraph (1) of this Article as prescribed by Presidential Decree.

(3) A person who objects to the imposition of an administrative fine under

paragraph(2) of this Article may lodge a protest with the Commissioner of the Korean Intellectual Property Office within thirty days of being notified of the imposition.

(4) Upon receipt of a protest under paragraph(3) of this Article, the Commissioner of the Korean Intellectual Property Office shall immediately notify the competent court, which shall adjudicate the case of the administrative fine according to the Noncontentious Case Litigation Procedure Act.

(5) Where no objection has been raised within the period prescribed in paragraph(3) of this Article and where the fine has not been paid, the Commissioner of the Korean Intellectual Property Office shall collect the fine in accordance with the rules of collecting national taxes in arrears through the head of the competent tax office.

ADDENDUM

This Act enters into force on January 1, 1987.

ADDENDUM

Article 1 Date of Entry into Force

This Act enters into force on the date determined by Presidential Decree within one year of its promulgation.

<Presidential Decree (No. 13781), signed on December 14, 1992, enters into force on December 15, 1992.>

Article 2 Transitional Measures on the Infringement of Trade Secrets before the Enforcement of this Act

Amended Articles 10 to 12 and 18(1)(iii) do not apply to infringements of trade secrets before this Act enters into force. The same applies when a person who acquired or used a trade secret before this Act entered into force uses the trade secret after this Act enters into force.

ADDENDUM

This Act enters into force on January 1, 1998. (Proviso deleted.)

ADDENDUM

Article 1 Date of Entry into Force

This Act enters into force on January 1, 1999.

Article 2 Transitional Measures on Penal Provisions

The previous provisions govern the application of penal provisions to acts that infringe trade secret before this Act enters into force.

Article 3 Transitional Measures on Extinctive Prescription

Notwithstanding amended Article 14, the previous provisions apply to the extinctive prescription of the right to forbid or prevent an act of trade secret infringement before this Act enters into force.

ADDENDUM

Article 1 Date of Entry into Force

This Act enters into force on July 1, 2000.

Articles 2 to 5 Deleted

ADDENDUM

Article 1 Date of Entry into Force

This Act enters into force on July 1, 2001.

Article 2 Exception on Penal Provision

Notwithstanding Article 18(3), a person who engages in an act of unfair competition under Article 2(1)(iii) and (vii) is not liable to the punishment under Article 18(3) until December 31, 2001.